the premises to the plaintiff and mesne profits assessed upon the same basis as I have assessed the damages.

The plaintiff is entitled to her costs to be taxed by the Senior Assistant Registrar.

(After discussion with counsel). Warrant of ejectment to be issued at the expiration of one month from today.

NOTE: On checking the record of this judgment I note that although I had intended to do so I have overlooked referring to the judgment of the Privy Council in *Glenwood Lumber Co. Ltd.* v. *Phillips* [5] as authority for the statement that whether an instrument operates as a licence or a demise is a question not of words but of substance, and *prima facie* if exclusive possession is given it is a lease even if it is called a licence. A similar authority is to be found in *H.E. Wijesuria* v. *Attorney-General for Ceylon.* [6] I would distinguish *Errington* v. *Errington* [7] and *Cobb* v. *Lane* [8] on the ground that the family relationships in each case established lack of intention to create legal consequences. There was before me no evidence of any such lack of intention as between the State of Perak and the plaintiff.

Claim allowed.

Solicitors: *S. A. Lingam; Gibb & Co.*

REGINA v. CHONG SONG CHUN

[A. Cr. J. (Wee Chong Jin J.) July 5, 1961]

[Singapore — Magistrate's Appeal No. 58 of 1961]

Criminal Law and Procedure — Discharge of accused amounting to an acquittal after properly refusing an application by the prosecution for an adjournment — Criminal Procedure Code (Cap. 132), ss.170, 172(f), 172(g) and 175.

Respondent being the managing partner of Soon Teck Finance Co., had been charged with 11 charges under the Moneylenders Ordinance, 1959. These 11 charges were consolidated into one charge on the date of hearing. The accused claimed trial to both sets of charges. After hearing two witnesses for the prosecution the Court ordered the trial to proceed on one of the original 11 charges and at the close of the case for the prosecution the Court acquitted the respondent on this charge. Thereupon the prosecution applied for an adjournment of the remaining charges to enable it to call a witness. Counsel for the defence objected to the application whereupon the Court made an order of acquittal on the remaining 10 charges.

Held: it was clear from the provisions of the Criminal Procedure Code and on the authority of *Kuppusamy* v. *Public Prosecutor* [1], that the learned Magistrate had no jurisdiction to make the order of acquittal which he made.

Case referred to:—

(1) *Kuppusamy* v. *Public Prosecutor* [1948] M.L.J. 25.

MAGISTRATE'S APPEAL.

M. Coomaraswamy (Deputy Public Prosecutor) for the appellant.

David Chelliah for the respondent.

Wee Chong Jin J. (delivering oral judgment): This appeal must be allowed.

The facts are not substantially in dispute, although it would appear that the prosecution were attempting, in view of the twelve charges appearing on the record, to charge the accused in respect of eleven separate offences, and on the twelfth charge for an offence which embraced the eleven separate offences. Be that as it may, the trial proceeded on the basis that the accused was charged and had claimed trial on the twelve charges and after hearing two witnesses the learned Magistrate decided to limit the trial and to hear evidence relating to only one of the twelve charges. After the case for the prosecution was concluded, the learned Magistrate came to the view that the prosecution had failed to prove its case, and accordingly acquitted the accused on that particular charge, but when the prosecution applied for adjournment on the remaining charges the learned Magistrate, although properly exercising his discretion in refusing the adjournment, then went on to acquit the accused, it would seem, on only ten out of the remaining eleven charges.

This appeal is against the order of acquittal in respect of those ten charges, and it seems clear from the provisions of the Criminal Procedure Code and on the authority of *Kuppusamy* v. *Public Prosecutor* [1] that the learned Magistrate had no jurisdiction to make the order of acquittal which he made.

The record being as it is, I will direct that in place of the order of acquittal there should be substituted an order of discharge on ten charges. Now, on the face of the substituted order it would appear that, as it stands, it would not be possible to say which of the ten out of the remaining eleven charges have been disposed of in this manner, and I think it is a question for consideration by the Public Prosecutor, on the facts of the matter as it now stands and in view of the way the charges have been formulated, to consider whether this is not a fit case where there should be finality to all these proceedings. It is, however, a matter for the Public Prosecutor.

My formal order would be that the order of acquittal on ten charges be reversed and there be substituted therefor an order of discharge, however unsatisfactory that may be.

Appeal allowed.

Solicitors: *Drew & Napier.*